

FAYETTEVILLE POLICE DEPARTMENT  
FAYETTEVILLE, ARKANSAS 72702

**GENERAL ORDER # 34**

***SUBJECT:*** IDENTIFICATION PROCEDURES

***CROSS-REFERENCE:*** FPD 42.1.1

***DATE APPROVED BY COP:*** March 28, 2023

  
***Chief Mike Reynolds***

***PURPOSE:*** The purpose of this general order is to establish guidelines to follow when conducting identification proceedings.

***ORDER:*** Officers of the Fayetteville Police Department will follow the procedures listed below on identification proceedings.

***DEFINITIONS:***

Show-Up/Drive-by: The process by which a witness is driven to a suspect who has been stopped in the area of a crime for purposes of excluding or verifying the suspect as the person responsible.

Photo array: The process by which a witness is shown a series of photographs which may contain a suspect in a crime for purposes of excluding or verifying the suspect as the person responsible.

Single Photo Verification: The process by which a witness is shown a single photograph due to the fact they have familiarity with the person who is suspected in the criminal activity and law enforcement is simply verifying the suspect identified is the same subject known to the witness.

***PROCEDURES:***

- A. In all identification procedures, officers should take steps to ensure the procedure is not suggestive by the manner in which it is carried out. Thus, officers should use caution as to the manner in which suspects are presented. Each eyewitness who views a show-up or photo array shall sign a Witness Instruction Form containing the following information prior to the show-up or photo array:
1. The suspect might not be in the show-up or photo array, and the eyewitness is not obligated to make an identification.
  2. The eyewitness should not assume the person administering the show-up or photo array knows which person is the suspect in the case.

- B. When completing his/her report, an officer should document the following observations for validity of the procedure:
1. Witness' opportunity to view the suspect at the time of the crime;
  2. Witness' focus of attention at time of crime;
  3. Accuracy of the witness' description of the suspect prior to the identification procedure;
  4. Level of certainty exhibited by the witness in making the identification, and;
  5. Length of time between the crime and the identification.
- C. Show-Up/Drive-by Identification: Although the United States Supreme Court has not affixed a duration of time within which these procedures may be conducted, this type of identification generally occurs within a short period of time and reasonable proximity from the crime:
1. Unless an extreme emergency exists, the witness shall be taken to the location of the suspect. In cases involving multiple witnesses, witnesses shall always be separated. The movement of the suspect to the witness' location may constitute an arrest for which probable cause is required. If probable cause is lacking without identification, movement may be determined to have been an unlawful arrest;
  2. The officer should take steps to minimize the suggestiveness of the identification if it does not compromise the safety of the officer. The following should be considered:
    - a. Have suspect standing outside of any law enforcement vehicle rather than seated in the vehicle;
    - b. Have suspect standing without handcuffs or with handcuffs not visible to the witness;
    - c. The appearance that suspect maintains his or her freedom will undercut suggestiveness;
    - d. If items taken or used in the crime have been recovered, do not allow the witness to view or become aware of the recovery until the identification proceeding is complete, and;
    - e. The witness' failure to recognize the subject must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. Additionally, if the witness identifies a suspect in the future, this failure to identify the first subject presented to them may add credibility to their identification.
    - f. Officers are prohibited from providing feedback to the witness regarding their identification in the show-up. The decision to reveal such information or discuss the identification is to be made only by the prosecuting attorney's office.
- D. Photo Array: The following steps will be followed in composing a photo array:
1. Include only one suspect in each identification procedure;
  2. Select fillers who generally fit the witness' description of the perpetrator;

3. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident;
4. Include a minimum of five filler photos per identification procedure;
5. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers;
6. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (i.e. scars, tattoos, etc.) used to describe the perpetrator by artificially adding or concealing that feature. Any alteration should only be used in extreme circumstances and after consultation with a Criminal Investigation Division supervisor.
7. Consider placing suspects in random positions in each photo array.
8. When showing a new suspect, avoid reusing fillers in photo arrays shown to the same witness;
9. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness;
10. Once the photo array is completed, view the spread to ensure that the suspect does not unduly stand out;
11. Preserve the presentation order of the photo array. In addition, the photos themselves should be preserved in their original condition;
12. All photos must include persons that meet the general appearance of the suspect;
13. Photos should be presented in a way that does not suggest that the subjects in the photos are criminals (i.e. mug-shot with numbers). Mug-shots may be used, but portions of photo that indicate that photo is a mug-shot should be cropped or hidden from the witness;
14. **Sequential Presentation:** Photos will not be shown as a six-pack, instead the photos will be shown as an array from a stack, held by the presenter who shall present the photographs one at a time as if dealing a deck of cards to the witness;
15. **Double-blind Presentation:** The officer who conducts the photo array shall be someone who is not aware of which photo in the array is that of the suspect in the case. The witness should be told the officer conducting the photo array does not know who the suspect is. An exception to these requirements may exist where the offender(s) is known to all personnel as the possible suspect(s) identified in the particular case;
16. The presentations of photo arrays to witnesses shall be video and audio recorded, including those conducted away from the Fayetteville Police Department. For rare occurrences where the officer cannot video and audio record the presentation, the officer shall be required to articulate legitimate reasons for not recording in the report.
17. Witness instruction: The person viewing the photo array should be told that the perpetrator may or may not be in the photo array, and the investigation will continue regardless of whether identification is made or not;

18. Witnesses should be segregated before, during, and after the procedure and instructed not to discuss the identification process with each other;
  19. During the identification process, officers shall not, in any way, prompt the witness toward a particular photo;
  20. At the time of the identification, the eyewitness should provide a statement in his or her own words indicating their level of confidence in the identification;
  21. The presentation/order of presentation must be documented. The witness who selects a photo as the suspect should sign and date the photo they have selected with a full signature. The witness should initial and date the other photos presented to them; and
  22. The witness' selection of a photo that is not the suspect must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime.
  23. Officers are prohibited from disclosing to the witness whether or not he/she selected the photograph of the person that was suspected of the crime. The decision to reveal such information is to be made only by the prosecuting attorney's office.
- E. Single-Photo Verification: This process shall only be used where the witness is familiar with the suspect, and the officer is merely attempting to ensure the witness and the officer are both referring to the same person by showing them a photograph.
- F. A report is required of each officer involved to include an officer conducting a show-up, an officer that prepared a photo array, an officer utilized in the delivery of a photo array, and an officer presenting a single-photo verification.
- G. The Witness Instruction Form on the following page will be utilized for show-ups and photo arrays:

## **Witness Instruction Form for Show-ups and Photo Arrays**

### **A. Show-Up Process**

1. The suspect may not be in the show-up, and you are not obligated to make an identification.
2. It is just as important to exclude innocent persons from suspicion as it is to identify the person responsible for the crime.
3. You should not feel you have to make an identification. Take as much time as you need. If you make an identification, I will note your exact words regarding your identification.
4. We will continue to investigate the incident regardless of whether you make an identification.
5. Since this is an ongoing investigation, you should not discuss this identification or the results with anyone.

### **B. Photo Array Process**

1. You will be asked to view a collection of photographs.
2. The person that officers suspect may or may not be present in the photo array, and the photographs are not in any particular order.
3. It is just as important to exclude innocent persons from suspicion as it is to identify the person responsible for the crime.
4. You should not feel you have to make an identification. Take as much time as you need to look at each photograph. If you make an identification, I will note your exact words regarding your identification.
5. Individuals presented in these photographs may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
6. We will continue to investigate the incident regardless of whether you make an identification.
7. After viewing all the photographs/persons, if you can make an identification, please sign and date the photograph you have selected with a full signature. Please initial and date the other photographs that were presented to you.
8. Since this is an ongoing investigation, you should not discuss this photo array or the results with anyone.
9. The photographs will be shown to you one at a time and are not in any particular order. Take as much time as you need to examine each photograph. If you make an identification, I will continue to show you the remaining photographs in the group.

I, \_\_\_\_\_, hereby acknowledge that the above applicable instruction group has been read aloud to me, and I understand how this process will be administered.

\_\_\_\_\_  
Witness's signature/date/time

\_\_\_\_\_  
Administrator's signature/date/time

## Formulario de Instrucción de Testigos Para Presentaciones y Conjuntos de Fotos

### A. Proceso de Presentación

1. Es posible que el sospechoso no esté presente y usted no está obligado a realizar una identificación.
2. Es tan importante excluir de la sospecha a las personas inocentes como identificar a la persona responsable del delito.
3. No debe sentir que tiene que hacer una identificación. Tómese todo el tiempo que necesite. Si hace una identificación, anotaré sus palabras exactas con respecto a su identificación.
4. Continuaremos investigando el incidente independientemente de que usted haga una identificación.
5. Dado que se trata de una investigación en curso, no debe discutir esta identificación ni los resultados con nadie.

### B. Proceso de Matriz de Fotos

1. Se le pedirá que vea una colección de fotografías.
2. La persona que los oficiales sospechan puede o no estar presente en la serie de fotografías, y las fotografías no están en ningún orden en particular.
3. Es tan importante excluir de la sospecha a las personas inocentes como identificar a la persona responsable del delito.
4. No debe sentir que tiene que hacer una identificación. Tómese todo el tiempo que necesite para mirar cada fotografía. Si hace una identificación, anotaré sus palabras exactas con respecto a su identificación.
5. Las personas presentadas en estas fotografías pueden no aparecer exactamente como lo hacían en la fecha del incidente porque las características como, el cabello y vello facial están sujetas a cambios.
6. Continuaremos investigando el incidente independientemente de que usted haga una identificación.
7. Después de ver todas las fotografías/personas, si puede hacer una identificación, firme y feche la fotografía que ha seleccionado con su firma completa. Escriba sus iniciales y feche las otras fotografías que le fueron presentadas.
8. Dado que se trata de una investigación en curso, no debe discutir esta serie de fotografías ni los resultados con nadie.
9. Las fotografías se le mostrarán una a la vez y no están en ningún orden en particular. Tómese todo el tiempo que necesite para examinar cada fotografía. Si haces una identificación, le seguiré mostrando las fotografías restantes del grupo.

Yo, \_\_\_\_\_, por la presente reconozco que se me ha leído en voz alta el grupo de instrucción aplicable anterior y entiendo cómo se administrará este proceso.

\_\_\_\_\_  
Firma del testigo/fecha/hora

\_\_\_\_\_  
Firma del administrador /fecha/hora